

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 14
AUGUST 2012**

Present: Councillor D Perry – (Chairman).
Councillors J Loughlin, V Ranger and J Salmon.

Also present:

The drivers; Mr B Drinkwater, Chairman ULODA, (representing the driver in the second matter); the employer of the driver in the second matter.

Officers present:

C Oliva (Solicitor), R Dobson (Democratic Services Officer) and M Hardy (Licensing Officer).

LIC5 EXCLUSION OF THE PUBLIC

RESOLVED that, under section 100I of the Local Government Act 1972, the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 3 of part 1 of Schedule 12A of the Act.

LIC6 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the first driver to the meeting, and introduced members of the Committee and officers.

The Licensing Officer asked the driver to confirm that he had received the report prior to the meeting. The driver confirmed that this was so.

The Licensing Officer then took the Committee through a report regarding an application for a joint private hire/hackney carriage driver's licence. Whilst the applicant met the Council's licensing standards, in view of the number and nature of the previous convictions revealed by the CRB checks accompanying the application, officers had referred the matter to the Committee for decision rather than exercise delegated powers. The report set out brief details of the offences for which the driver had received convictions.

The Chairman invited the Applicant to comment on the report. The Applicant confirmed that the facts as stated so far were correct.

There were no questions from Members, and the Chairman invited the driver to address the Committee.

The driver said the offences detailed in the report dated from when he was young, and that they were on the whole attributable to being in the wrong place at the wrong time. His life had turned around, as he had since that time been married for a period of 20 years, and ran a business as a taxi operator employing approximately 35 staff. He wished to obtain a licence so that he could be more 'hands on' in his business. He wished to be able to drive his employees to show them hotels and businesses around the district for various

reasons, such as showing his employees the best routes for minimising disturbance in residential areas.

The Chairman asked about the circumstances of a speeding offence on 18 June 2010. The driver said this was for driving at 34mph in a 30 mph area.

Councillor Loughlin asked whether alcohol was involved in any of the convictions. The driver said the most recent incidents were in February 1996, which was the date when he got divorced, and an incident in 1999 at the public house which he and his wife ran, and he gave brief details.

The Licensing Officer advised the Committee that their decision should be based on the balance of probabilities.

The Committee withdrew to consider the matter from 1.15pm, returning at 2.40pm to give its decision, as follows.

DECISION

The driver has made an application to UDC for a Private Hire/Hackney Carriage Driver's Licence. On his application the driver revealed his four previous convictions which were also reflected in his Criminal Records Bureau Enhanced Check. All four convictions are spent under the Rehabilitation of Offenders Act 1974. Spent convictions do not prevent the grant of a driver's licence under delegated powers, however, the nature of the offences are such that officers felt that they should not use their delegated powers to grant a licence and brought the matter to the Licensing and Environmental Health Committee to decide whether or not the driver was a fit and proper person to hold a driver's licence.

Details of the offences are as follows. In September 1980 the driver went with friends to White Hart Lane, London to watch a football match, Tottenham Hotspur and West Ham. He stood on the terraces with the West Ham supporters. He states that the Tottenham Hotspur supporters charged the West Ham supporters and general disorder and fights broke out. He was ejected from the grounds with the fans of both teams. He thinks a Police car got damaged. He was charged with criminal damage and using threatening abusive words or behaviour. He pleaded guilty, and was fined £150.00. He was not legally represented.

In November 1984 the driver and a friend were walking along the High Street in Epping when a group of males aged between 20 and 30 started to verbally abuse them for no apparent reason. He stated that one of group assaulted him and he retaliated by assaulted the individual. He pleaded guilty to assault occasioning actual bodily harm and was fined £100.00. He was not legally represented.

In February 1996 the driver visited a pub in Bishop's Stortford, it was the same day he got divorced and his transport company went bankrupt. He knew the publican who owed him £5000; however the driver states that he only intended to have a drink and not to enquire when his debt was to be paid. An argument developed and the driver and the publican jostled each other. The police were

called and the driver was arrested. He pleaded guilty to one offence of common assault and was ordered to do 150 hours of Community Service and pay compensation of £75.00. He was not legally represented.

The driver and his wife were running the Ash Public House. At 11pm one evening five males and three females entered the pub, he states, intent on causing trouble. The three females chased the driver's wife who made good her escape to the private quarters, locking a security door behind her. The males turned their attention to the driver, some customers came to his aid and two of the females assaulted two customers. With the assistance of customers the driver ejected the males and called the police. After enquiries at the scene he was arrested and charged with a number of offences to which he pleaded not guilty on receiving legal advice. Before the Magistrates, on receiving legal advice he pleaded guilty to one offence of using disorderly behaviour or using threatening, abusive or insulting words likely to cause harassment alarm or distress, the other charges were dropped. He was fined £150.00 and ordered to pay compensation of £50.00. Others were prosecuted as a result of the disturbance but the driver is not aware of the outcome.

The driver's record of assaults and behaviour is reflected in his previous convictions which the Committee accepts are both some time ago and are spent but do however show a tendency towards a violent disposition and possible anger management issues.

The Committee also notes that the driver has 3 points on his licence with regard to a speeding offence. In his favour he has readily admitted his past history for which we give him credit.

This panel has to be satisfied that he is a fit and proper person to hold a licence and have a duty to the public to ensure that this is the case.

The Committee finds that the driver is a fit and proper person to hold a licence, but must warn him that it has placed its trust in him, so urge him not to betray that trust.

LIC7

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed to the meeting the driver, his employer, and his representative, Mr Drinkwater.

The Licensing Officer asked the driver whether he had received a copy of the report. The driver answered that he had. The Committee noted that the driver's licence was suspended pending the outcome of the hearing.

The Licensing Officer took the Committee through the detail of his report, which set out the circumstances of an incident of common assault on the driver's ex partner, for which the driver had received a caution.

Following the presentation of the report the driver confirmed he was satisfied that the facts had been stated correctly.

Mr Drinkwater addressed the Committee. He sought clarification of various matters, in particular remarking on the description of the driver having punched his then partner on the arm. In Mr Drinkwater's submission an account of what happened should refer not to a punch but to placing his hand on her arm to restrain her.

Mr Drinkwater referred to the length of time the driver had been detained in the police custody suite and the decision of the CPS not to prosecute but to offer a caution.

The Chairman invited the driver to address the Committee.

Mr Drinkwater said the driver would wish to make representations via questions he would put to him. Mr Drinkwater said he would try to show that the driver was a fit and proper person to hold a licence. He said the incident which had led to the driver receiving a caution and his licence being suspended was a one-off. The driver had worked for five years for his current employer, a taxi firm run by the driver's father, who was also present today. He provided members with copies of character references from three clients of the firm, all showing the driver in a positive light.

In reply to questions put by Mr Drinkwater the driver said he was very sorry for the incident. He felt he had used force only to defend himself, and felt remorse for what had happened. The driver said he had been told by the police that both his and his ex partner's statements exactly concurred. He did not counterclaim for assault because he did not wish to exacerbate the situation or to bring his employer's name into it.

Mr Drinkwater asked the driver's employer who was also his father to comment on his employment. The driver's father said the driver was known for his professional and helpful attitude amongst the firm's clients and he hoped in time to hand over to him the business.

Mr Drinkwater said the police had decided not to prosecute the driver.

The Council's Solicitor said that for a caution to be given there had to be an admission of guilt.

The driver said in response to a question from Mr Drinkwater that he had found the sanction of suspension which had been imposed on him rather harsh, as he felt the incident for which he had accepted the caution was not in the public domain but between his ex partner and him. He had lost earnings as a result of the suspension amounting to £1800 to £2000. Although he had had help from his family he wished to be in a position to earn his own money. He was now the sole occupier of the bungalow he had previously occupied with his former partner, and therefore had to meet the rent of £725 per month himself.

Mr Drinkwater said in summary that the driver was now at a low ebb emotionally and financially and faced severe hardship in trying to meet the rental costs of his property. He hoped the Committee would find in his favour.

Members questioned the reference to the term 'punch' regarding the detail of the assault as described in the report. The driver gave his account of what had happened, and confirmed that there had been no reconciliation with his former partner.

In reply to a further question he said he had after the incident gone to a darts meeting. It was at 11.50pm that he had been asked to attend the police station, and the entire incident including time spent at the police station had taken 8 hours. No action was taken by the police regarding the driver's former partner. Members noted the driver had chosen not to take legal advice.

The Licensing Officer drew to members' attention the reference in the driver's email to the Council of 26 July 2012 to his having 'punched her in the arm'. This description of the incident by the driver himself therefore clarified the point raised earlier by the driver's representative.

Members asked whether the driver had seen a copy of his ex partner's statement. The driver said he had not, but had been told by the police that both his and her accounts tallied.

The Licensing Officer advised the Committee that they could not look behind the caution and that the balance of probabilities was the correct test.

The Solicitor said it appeared from what the driver had said that he seemed to feel that because the violence had taken place in private and not in public the committee should take this into account.

The driver said he felt the duration of 18 days of the suspension was harsh.

Mr Drinkwater said the advice received from the solicitor for the National Private Hire Association was that this action by the Council was understandable despite the fact that the incident was extremely localised.

Mr Drinkwater then summed up on behalf of the driver, saying that he remained a fit and proper person; that his record was unblemished from 2007 to 2012; that the driver's father's statement and the good character reports supplied spoke volumes. This was a one-off domestic tiff in the privacy of the driver's own home. The driver had liaised with the police and had pleaded self defence in circumstances of extreme provocation. The suspension had been harsh and he asked for a proportionate outcome. The driver had lost approximately £2000 in earnings. There was almost 100% probability that he would not re-offend. This was a young man who wanted to return to his career.

The Committee withdrew at 3.10pm to consider the matter, and returned at 3.30pm to give its decision.

DECISION

On 19 March 2007 the driver was granted a Private Hire Vehicle/Hackney Carriage Driver's licence. The licence is renewable on an annual basis and his current licence expires on 28 February 2013.

On 26 July 2012 the driver informed UDC that he had received a police caution for assaulting his partner the day before. The driver had complied with the conditions of his licence in that he informed UDC within seven days of the issue of the caution.

The driver's licence was suspended forthwith.

The driver gave his account of the incident.

On 25 July 2012 the driver commenced driving at 7.20am and having taken suitable rest periods he finished work at 7.30pm. He returned home and went into the kitchen intending to take his evening meal out of the oven. His partner was in the kitchen which is a small area. She was standing by the draw in which the utensils were kept which the driver wished to get to take his meal out of the oven. He asked his partner to move aside which she did not do despite several request. She got very upset, an argument ensued in which she used the word "ungrateful", she threw his meal in the dustbin and threw a glass of coca cola against the wall.

The driver states he tried to calm his partner but she spat at him and tried to kick and punch him. She hit him on the arm with a glass jar and he retaliated by punching her on the arm to stop her. She retreated to the bathroom and the driver states he tried to calm her down but without success so he left the premises.

Later in the evening he received a telephone call from the police asking him to meet them by appointment. He attended the police station at the appointed time. He admitted assaulting his partner and received a police caution. He declined legal advice.

The driver states he was not the instigator of the incident. He is no longer in a relationship with his former partner and lives alone.

The driver's suspension was appropriate and proportionate in the circumstances. He has received a caution from Essex Police for a violent act towards his ex partner. A caution is recognised as an admission of guilt and is also deemed a reportable act within the Council's policy. This committee must be satisfied that he is now are a fit and proper person to hold a licence.

We have considered all the facts and borne in mind the circumstances surrounding the offence. The driver also correctly informed the Council of the caution within the 7 day period which is to his credit.

The committee when reaching its decision must be seen to be proportionate and fair in its determination and also must take into consideration the cost to the driver and his ability to make a living. Taking everything into consideration we do find this incident unpleasant: the driver should not have lost his temper. However this panel does accept that the driver's behaviour was out of character and was somewhat aggravated by his partner's actions.

We find that he is still a proper and fit person to hold a licence.

We must warn the driver however that any further incidents will be treated more seriously.

The meeting ended at 3.35pm.